



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

August 10, 1990

Honorable Peter C. Speers, III  
District Attorney  
9th Judicial District  
Courthouse  
Conroe, Texas 77301

OR90-369

Dear Mr. Speers:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 9969.

Your office has received several open records requests for information pertaining to the investigation of allegations of official misconduct against a named county commissioner. You contend that the records of this investigation come under the protection of section 3(a)(8) and the informer's privilege aspect of section 3(a)(1) of the Open Records Act.

You contend that section 3(a)(8) protects the requested documents because

[the file] includes, among other things, the conclusions of the investigators as to what offenses may have been committed by whom. . . . Disclosure of the written reports of the investigators would be severely disruptive of the investigative and prosecutorial functions of this office by interfering with the free and unfettered exchange of information and advice between my investigators and me.

Although investigators' speculations as to a suspect's guilt may properly be withheld pursuant to section 3(a)(8) during the pendency of a criminal investigation, see Open Records Decision No. 127 (1976), once the investigation is closed, this type of information may only be withheld if the release of the information would "unduly interfere" with law enforcement efforts. See, e.g. Open Records Decision No.

216 (1978) (copy enclosed). After examining the information at issue, this office has determined that only a small portion of the investigators' speculations may be withheld pursuant to section 3(a)(8) because the release of this information may unduly interfere with future investigations; the remaining portions of the investigators' reports must be released. You may, however, withhold the home telephone and "beeper" numbers for all police personnel pursuant to section 3(a)(8). See Open Records Decision No. 506 (1988).

You next contend that the informer's privilege aspect of section 3(a)(1) protects all witness statements. Two reasons for withholding names and statements of witnesses, despite the absence of a criminal prosecution, are that disclosure might either (1) subject the witnesses to intimidation or harassment or (2) harm the prospects of future cooperation between witnesses and law enforcement authorities. Open Records Decision No. 252 (1980).

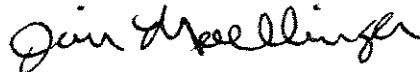
Where criminal investigations are closed, however, these two factors, like the section 3(a)(8) interests discussed above, must be examined on a case by case basis before governmental bodies may withhold such information. Where it is apparent from an examination of the facts of a particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers, the names and statements of witnesses may be withheld. Id.

Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the party complained of. See Open Records Decision No. 208 (1978). Consequently, you must release all statements made by Maxie Jones, Patricia Jones, and Robert Magarahan, who were each fired by the commissioner when he learned that they had talked to investigators, as well as any other statements by "informants" whose identities were revealed to the commissioner during the non-prosecution negotiations. The representative sample of witness statements that you submitted to this office tend to reveal the identities of the informants and so may be withheld in their entirety, see Open Records Decision No. 320 (1982), unless the informants' identities have been revealed to the commissioner.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a

published open records decision. If you have questions about this ruling, please refer to OR90-369.

Yours very truly,



Jim Moellinger  
Assistant Attorney General  
Opinion Committee

JM/RWP/le

Ref.: ID# 9969, 9700, 10128

Enclosure: Open Records Decision No. 216  
Marked Documents

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